No. 15055

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BEAUMONT SILVERTON, individually and as a member, representative and Secretary of Teamsters Local Union No. 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the American Federation of Labor,

Appellant,

vs.

VALLEY TRANSIT CEMENT COMPANY, INC., a Corporation,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

Nature and Theory of Appellant's Appeal.

Appellant herein prosecutes this appeal only as to the first thirteen causes of action against Appellee, Valley Transit Cement Company, Inc., a Corporation.

Appellant, Beaumont Silverton, commenced this action, *individually,* and purportedly, as a *member, Representative,* and *Secretary* of Teamsters Local Union No. 898 [Tr. of Rec. p. 3].

Appellant alleges in first thirteen causes of action of said complaint that (1) Appellee was a California Corporation; (2) that on or about November 1, 1948, Appellee and Local 898 entered into a "written collective bargain-

ing agreement covering wages, hours and conditions of employment for the employees of defendants—"; (3) that said collective agreement was in effect from November 1, 1948, to January 5, 1951; (4) that Appellee failed to pay its employees the minimum wage or overtime wage as provided in said collective agreement; (5) that prior to filing complaint, the wage claims of thirteen individual employees were assigned to *Beau Silverton* [Supp. Tr. of Rec. pp. 46 to 49, incl.].

Appellant makes an allegation concerning Local 898 in paragraph V of first cause of action of complaint, *only,* and *does not* incorporate said paragraph V in the second through thirteenth causes of action.

Appellant Beaumont Silverton commenced this action in the District Court of the United States in and for the Southern District of California, Southern Division, alleging twenty-six causes of action, the first thirteen causes of action under the Labor Management Relations Act of 1947 and the last thirteen causes of action under Labor Management Relations Act of 1947 and the Fair Labor Standards Act; each cause of action representing a wage claim of a prior employee of Appellee, as assigned to Beau Silverton. No diversity of citizenship is claimed or alleged in said complaint.

Thereafter, and after the decision of the Supreme Court case of *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation,* 348 U. S. 437, 75 S. Ct. 488, 99 L. Ed. 510 (this case hereinafter referred to as *Westinghouse* case), Appellee filed a motion to dismiss [Supp. Tr. of Rec. p. 43]. Lower Court granted Appellee's motion for judgment of dismissal [Tr. of Rec. p. 36]. Opinion of lower court reported at 140 Fed. Supp. 709.

As concerns the first thirteen causes of action, Appellant alleges jurisdiction of the Court by Section 301 of the Labor Management Relations Act of 1947, 29 U. S. C. A. 185. The Court below in its opinion, at 140 Fed. Supp. 709 at page 710, said that Section 301 "does not confer upon this Court jurisdiction of the claims for unpaid wages asserted by the Union as assignee in the first thirteen causes of action, . . ." (citing the *Westinghouse* case), and the ". . . Court has no jurisdiction of such claims in the absence of diversity of citizenship, . . ." It is from this part of the judgment of dismissal that Appellant appeals.

Comments on Appellant's "Statement of Fact."

It is obvious that Appellant's version of the factual situation is focalized on the position that the Local Union 898 is a party to the action, as assignee of the thirteen wage claims involved. (Appellant's Op. Br. p. 2.) However, by reference to paragraph VII of plaintiff's first cause of action [Tr. of Rec. p. 5], and paragraph II of each cause of action from second through thirteenth, and by reference to Exhibit 2 [Supp. Tr. of Rec. pp. 46-49, incl.], the assignments of the wage claims were in favor of *Beau Silverton,* an individual.

Comments on Appellant's "Legal Proceedings Below."

Appellant's version of the proceedings below again is focalized on the position that the Local Union 898 is a party, by stating "Local 898 commenced an action. . . ." and "It is from the judgment of dismissal of the first 13 causes of action that *Local 898* prosecutes this appeal." (Emphasis ours; Appellant's Op. Br. p. 2.) However, the title of the complaint [Tr. of Rec. p. 3] and paragraph

VI of first cause of action [Tr. of Rec. p. 5] plainly indicate that party *plaintiff* is Beaumont Silverton. Reference throughout the record further indicates plaintiff *singularly;* reaching the *only* conclusion that Beaumont Silverton *only* is the plaintiff and appellant.

Appellant claims the action was commenced by Local 898 for ". . . an accounting and damages, . . ." (Appellant's Op. Br. p. 2), but by reference to the complaint, and in particular paragraph VII of the first cause of action [Tr. of Rec. p. 5], and paragraph II of each of the causes of action from the second through the thirteenth, each paragraph referred to says: "That prior to the commencement of this action *the obligation herein sued upon* . . .," (emphasis ours); and by further reference to the prayer of the complaint [Tr. of Rec. p. 22], it appears without doubt that the first thirteen causes of action are actions by plaintiff upon wage claims. There are no allegations as particularly concerns any damage to Local 898, the only damages prayed for are the wage claims as prayed for in paragraph I of the prayer of the complaint [Tr. of Rec. p. 22].

Preliminary Statement.

The determining question on this appeal is apparent, namely, does Section 301 of Labor Management Relations Act of 1947, 29 U. S. C. A. 185, confer upon a United States District Court jurisdiction over an action brought by Appellant for unpaid wage claims of employees, as asserted by Appellant as assignee, in the first thirteen causes of action, absent diversity of citizenship?

ARGUMENT.

I.

Examination of the Westinghouse Case.

The *Westinghouse* case was an action between a Union representing employees and an employer for unpaid wage claims, allegedly in violation of collective bargaining contract negotiated by Union, absent diversity of citizenship. Complaint asked for declaratory relief, accounting, and the actual payment of the wage claims. The Supreme Court, in its opinion, held that such a cause of action was not comprehended by Section 301 of the Labor Management Relations Act and, therefore, complaint should be dismissed for want of jurisdiction.

In the opinion of the Supreme Court, six members held that Section 301 did not confer jurisdiction over such action in Federal Court, and there were three views expressed by the majority of the Court in arriving at same conclusion.

Mr. Justice Frankfurter authored the opinion of the majority, in which Mr. Justice Burton and Mr. Justice Minton joined. The opinion examines the language and legislative history of Section 301 and other related sections of the Labor Management Relations Act of 1947 and concluded that Congress intended to limit Section 301 to a grant of jurisdiction or a "forum" in cases only arising out of a breach of a collective bargaining agreement between Union and employer. (Generally, 348 U. S. at p. 460, 75 S. Ct. at p. 500, 99 L. Ed. at p. 524.)

Mr. Chief Justice authored a separate opinion in which Mr. Justice Clark joined. This opinion agrees with the conclusion reached in Mr. Justice Frankfurter's

opinion but disagreed on the reasoning to arrive at the conclusion. The reasoning of this short opinion was based on "statutory interpretation," and held under Section 301, that Congress did not intend "to authorize a union to enforce in a Federal Court the uniquely personal right of an employee. . . ." (348 U. S. at p. 461, 75 S. Ct. 501, 99 L. Ed. at p. 525.)

Mr. Justice Reed authored a further separate opinion. This opinion also agrees with the conclusion reached in Mr. Justice Frankfurter's opinion, but upon the ground that the wage claim did *not* grow or arise out of a collective bargaining contract, but that the "claim for wages for the employees arises from separate hiring contracts between the employer and each employee. . . . The facts show an alleged violation of a contract between an employer and an employee—a situation that is not covered by statute." (348 U. S. at p. 464, 75 S. Ct. at p. 502, 99 L. Ed. 527.)

II.

Application of Westinghouse Case Generally.

Since the decision of the Supreme Court, the lower Federal Courts in their application of the *Westinghouse* case to controversies concerning claims of a peculiarly personal nature, *i.e.,* wage claims, pension plans, and the like, have unanimously held that the Federal Courts do not have jurisdiction under Section 301, absent diversity of citizenship.

The First Circuit Court commented and said that the *Westinghouse* case,

> "has sharply curtailed the subject matter jurisdiction of Federal Courts under Section 301 to adjudicate

directly between union and employer over 'terms of a collecting agreement relating to compensation, terms peculiar in the individual benefit which is their subject matter and which, when violated, give a cause of action to the individual employee.' . . . However, the effect of the Westinghouse holding, reflected in all opinions of the majority justices, was to eliminate from Sec. 301 jurisdiction a complaint by a union that involves no more than a cause of action which is 'peculiar in the individual benefit' or 'the uniquely personal right of an employee' or which 'arises from the individual contract between the employer and employee.'" (*Local 205 etc. v. General Electric Company,* 233 F. 2d 85, at p. 100.)

The Third Circuit commented in a controversy by a union and *member* against employer for declaratory judgment, interpreting collective agreement provision regarding pension clause and accrued pension money to employee, and said:

"The contrariety of the three views expressed by the Justices who constituted the majority of the court in the *Westinghouse case* makes it difficult for an inferior court to apply that decision to controversies about matters *other than wage claims.* The *Westinghouse* decision necessarily teaches that a controversy about wage claims, even when predicated upon a disputed construction of a collective bargaining agreement, is beyond the power which Section 301 confers upon the federal courts." (Emphasis ours.) (*United Steelworkers, etc., et al. v. Pullman, etc.,* 241 F. 2d 547, at p. 549.)

The Fifth Circuit commented, in a controversy by a union to compel employer to contribute to health and

welfare fund denying that Federal Court had jurisdiction of the controversy and said:

> "Our decision of the jurisdictional point on this appeal is controlled by the ruling of the Supreme Court—(citing *Westinghouse* case), which held that the Federal District Court did not have jurisdiction of the suit." (*International Ladies' Garment, etc. v. Jay-Ann Co.,* 228 F. 2d 632, at p. 633.)

Also similarly,

> *Ferguson-Steere Motor Co. v. International, etc., 507,* 223 F. 2d 842, at p. 843; and
>
> *Lincoln Mills, etc. v. Textile Workers, etc.,* 230 F. 2d 81, at p. 87.

The Seventh Circuit commented, in a controversy by union and individual member against employer to obtain specific performance of arbitration provision of collective agreement, and said:

> "The legislative history of the provision (referring to Sec. 301), as related by the Court in Westinghouse strongly supports the premise that the sole purpose of Congress was to provide a forum, not to create substantive rights." (*United Steelworkers, etc., et al. v. Galland-Henning Mfg. Co.,* 241 F. 2d 323, at p. 325.)

The Ninth Circuit commented in a controversy by union against employer for declaratory judgment that employer owed wages to employee (union member) on wrongful discharge and said:

> "The Supreme Court's decision of March 28, 1955, holds that a Federal District Court has no jurisdiction to entertain such a complaint on either of the

> statutes relied upon and cannot award damages sought." (*International Longshoremen's, etc. v. Libby, McNeill & Libby,* 221 F. 2d 225, at pp. 225-226.)

The District of Columbia Circuit commented, in a controversy by union and former employee *individually* and as *President* of Local 506, against employer based upon discharge of employee for violation of employer's rule, and alleged breach of a term of collective agreement, and said:

> "The complaint also says the Company violated a term of the collective bargaining contract that requires notice to be given before penalties are imposed on employees. But a United States District Court has no jurisdiction, under Sec. 301 of the Labor Management Relations Act, 61 Stat. 156, 29 USCA Sec. 185, or otherwise, of a union's claim that employees have been injured by an employer's breach of a collective bargaining contract—(citing Westinghouse Case)." (*United Electrical, etc. et al. v. General Electric Co.,* 231 F. 2d 259, at p. 261.)

It appears without question from the opinions of the various United States Courts of Appeals, as cited aforesaid, that the Federal Courts are applying the *Westinghouse* opinion to all controversies concerning claims of a peculiarly, and uniquely personal nature, *i.e.,* wage claims, pension plans, and are holding that Federal Courts do not have jurisdiction for such type of cases, under Section 301.

III.

Application of Westinghouse Case to Instant Case.

It clearly appears that the instant case is a case against the employer for purported unpaid wage claims, or, in other words, it falls within a "Westinghouse-type-case." True, party plaintiff herein is a bit different, *i.e.,* an *individual, member, representative* and *Secretary* of Local 898, than the case where the union brings action in own name as an entity, but it appears that this difference takes the instant case further away from Section 301. At best, Section 301 provides for "Suits for violation of Contracts between an employer and a labor organization. . . ." There is no provision in the Act for a representative to bring action.

This same point came up for discussion in *Local Union 420, etc., et al. v. Carrier Corporation,* 130 Fed. Supp. 26, and at p. 29 thereof the Court said:

> "I am also of the opinion that the complaint has been instituted by improper plaintiffs. Were we not here met with the insuperable barrier of an illegal contract, and assuming we were dealing with a legal collective bargaining agreement, plaintiffs, as an entity, Section 301(b), Act of June 23, 1947, 61 Stat. 156, might have a right of action against this defendant, if only for nominal damages. Here, however, plaintiffs are not *suing as an entity as provided by the Act* but by a Trustee ad Litem." (Emphasis ours.)

It follows further that *Section 301* limits right to bring suit to a union or employer association entering

into collective agreement and *does not extend to individuals.*

Square D Co. v. United Electrical, etc. (1954), 123 Fed. Supp. 776, at p. 779;

Silverton, et al. v. Rich (1954), 119 Fed. Supp. 434, at p. 436, *et seq.;* and

Schalte v. International Alliance of Theatrical Stage Employees, etc. (D. C. S. D. Cal., 1949), 84 Fed. Supp. 669, affirmed on other grounds 9th Cir., 1950, 182 F. 2d 158, Certiorari denied 1950, 340 U. S. 827, 71 S. Ct. 64, 95 L. Ed. 608, rehearing denied 1950, 340 U. S. 885, 71 S. Ct. 194, 95 L. Ed. 643.

Even if Local 898 was a party in the instant case, and an appellant, the Union could not maintain these actions, as the Union would then be attempting to enforce "uniquely personal rights of employees," that the *Westinghouse* case said a union could not do.

Appellant in Appellant's Opening Brief, at top of page 15, cites the *National Hairdressers' Association v. Pilad Co.,* 7 Fed. Rules Serv. 17a. 151, Case 1, 3 F. R. D. 199, but on examination of this case we find that it is a patent infringement case and not applicable to the factual situation in the instant case.

An assignment merely transfers the interest of the assignor with assignee "standing in shoes" of the assignor, taking his rights and remedies, subject to any *defenses* which the obligor has against assignor, *Bliss v. Cal. Co-Op Producers,* 30 Cal. 2d 240, at p. 250, and

provided compliance with California Labor Code, Section 300, *et seq.* Procedurally, Rule 17, Federal Rules of Civil Procedure, allows assignee to bring action in own name, on basis of diversity and amount and providing assignment *was not* made for purpose of invoking jurisdiction of Federal Court. (3 *Moore's Federal Practice,* (2d Ed.), at p. 1329.) In instant case no diversity alleged; the assignment nor Rule 17 does not change the instant case.

Conclusion.

We respectfully submit that basically this action is for recovery on thirteen purported unpaid wage claims, brought by an *individual* in various capacities, but regardless of the capacity of Appellant, the authorities cited herein clearly establish that the instant case is a "Westinghouse-type-case" and not a "Section-301-case."

We pray that judgment be affirmed.

Respectfully submitted,

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